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SUBJECT: STATEMENT OF FACTS RE VOTE OF HOUSE SELECT COMMITTEE ON INTELLIGENCE

NSC review completed

- 1. ON NOVEMBER 14 THE HOUSE SELECT COMMITTEE ON INTELLIGENCE VOTED TO RECOMMEND TO THE HOUSE OF REPRESENTATIVES THAT THE SECRETARY OF STATE BE FOUND IN CONTEMPT OF THE CONGRESS FOR FAILURE TO COMPLY WITH THREE SUBPOENAS EARLIER ISSUED BY THE SELECT COMMITTEE. SINCE THIS ACTION BY THE SELECT COMMITTEE IS OF OBVIOUS INTEREST AND CONCERN TO ALL EMPLOYEES OF THE DEPARTMENT OF STATE AND THE FOREIGN SERVICE, AND SINCE THE FACTS RELEVANT TO THIS ENTIRE ISSUE ARE BOTH COMPLICATED AND NOT GENERALLY KNOWN, THE FOLLOWING STATEMENT OF FACTS HAS BEEN PREPARED AND IS BEING SENT FOR YOUR INFORMATION.
- 2. ON NOVEMBER 14, 1975, THE HOUSE SELECT COMMITTEE ON INTELLIGENCE (PIKE COMMITTEE) VOTED TO REPORT THREE RESOLUTIONS WHICH, IF ADOPTED BY THE HOUSE OF REPRESENTATIVES, WOULD CITE HENRY A KISSINGER "FOR CONTUMACIOUS CONDUCT" IN CONNECTION WITH THREE SUBPOENAS ISSUED BY THE COMMITTEE ON NOVEMBER 6, 1975.
- 3. ONE OF THE SUBPOENAS WAS ADDRESSED TO "HENRY A. KISSINGER, SECRETARY OF STATE, OR ANY SUBORDINATE" HAVING CUSTODY OR CONTROL OF SPECIFIED DOCUMENTS. THE DOCUMENTS REQUESTED WERE STATE DEPARTMENT RECOMMENDATIONS FOR COVERT ACTION TO THE PRESIDENT, THE NSC, AND THE 40 COMMITTEE SINCE JANUARY 20, 1961.
- 4. WITH RESPECT TO THAT SUBPOENA, THE DEPARTMENT OF STATE BEGAN TO SEARCH THE FILES FOR THE DOCUMENTS REQUESTED BY IT SOON AFTER ITS RECEIPT ON NOVEMBER 7. IN PASSING, IT IS WORTH NOTING THAT THE SUBPOENA ASKED FOR DOCUMENTS FROM JANUARY 20, 1961 TO THE PRESENT AND IT GAVE THE SECRETARY ONLY UNTIL TUESDAY, NOVEMBER 11 AT 10:00 A.M. (FOUR DAYS INCLUDING A WEEKEND) TO PRODUCE THE DOCUMENTS. DESPITE THE MASSIVE FILES INVOLVED, THE DEPARTMENT HAD BY MONDAY, NOVEMBER 10, IDENTIFIED EIGHT DOCUMENTS AS PROBABLY COVERED BY THE SUBPOENA. AS THESE DOCUMENTS WERE ALL RECOMMENDATIONS TO PREVIOUS PRESIDENTS OR COMMITTEES COMPOSED OF THEIR SENIOR AIDES, THEY WERE SENT TO THE WHITE HOUSE FOR A DETERMINATION AS TO WHETHER THEY SHOULD BE

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RELEASED TO THE COMMITTEE. THEREAFTER, THE DECISION TO RELEASE SUCH RECOMMENDATIONS RESTED NOT WITH THE SECRETARY OF STATE, BUT WITH THE PRESIDENT. THE COMMITTEE STAFF WAS INFORMED OF THESE ACTIONS ON NOVEMBER 10; ON NOVEMBER 13 THE COUNSEL TO THE PRESIDENT WROTE THE COMMITTEE REQUESTING A WEEK'S EXTENSION OF TIME, GIVEN THE SERIOUSNESS OF THE ISSUES UNDER CONSIDERATION. THE COMMITTEE DENIED THIS REQUEST.

- 5. ON NOVEMBER 14, THE PRESIDENT, ACTING ON THE ADVICE OF THE ATTORNEY GENERAL, EXERCISED EXECUTIVE PRIVILEGE WITH RESPECT TO THESE DOCUMENTS (AND TWO OTHERS DISCOVERED SUBSEQUENT TO THE TENTH) AND INSTRUCTED SECRETARY KISSINGER RESPECTFULLY TO DECLINE COMPLIANCE WITH THE SUBPOENA. THE COMMITTEE MEMBERS WERE IMMEDIATELY INFORMED, THROUGH THE COUNSEL TO THE PRESIDENT, AND IT WAS CONFIRMED IN WRITING BY A LETTER FROM THE ACTING LEGAL ADVISER OF THE DEPARTMENT OF STATE WHICH WAS DELIVERED DURING THE COMMITTEE'S HEARING ON NOVEMBER 14. NEVERTHELESS, THE COMMITTEE PROCEEDED TO VOTE IN FAVOR OF A RESOLUTION OF "CONTUMACIOUS CONDUCT" BY SECRETARY KISSINGER WITH RESPECT TO THAT SUBPOENA.
- 6. THE EXERCISE OF EXECUTIVE PRIVILEGE BY THE PRESIDENT IN THIS CASE IS WELL WITHIN THE ACCEPTED SCOPE OF THAT PRIVILEGE. IN FACT, IF THE PRIVILEGE HAS ANY MEANING, IT MUST EXTEND TO ADVICE AND RECOMMENDATIONS MADE TO THE PRESIDENT BY HIS CABINET ADVISORS. THIS IS DOUBLY TRUE WHEN THE SUBJECT IS SENSITIVE FOREIGN AFFAIRS AND MILITARY MATTERS. PRECEDENTS FOR SUCH EXERCISE OF PRIVILEGE GO

BACK TO GEORGE WASHINGTON.

7. THE FACT THAT THE DOCUMENTS IN QUESTION (WHICH WERE DATED FROM 1962 TO 1972) INCLUDED NO RECOMMENDATIONS BY SECRETARY KISSINGER AND NO RECOMMENDATIONS MADE TO PRESIDENT FORD, DEMONSTRATES THAT IT IS A PRINCIPLE THAT IS AT STAKE -- A PRINCIPLE OF IMPORTANCE TO THE DECISION-MAKING PROCESS WITHIN THE EXECUTIVE BRANCH -- AND NOT AN EFFORT TO COVER UP THINGS EMBARRASSING TO THE PRESIDENT AND THE SECRETARY.

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- 8. IN CONTRAST TO THE SUBPOENA TO THE SECRETARY OF STATE, THE TWO OTHER SUBPOENAS OF THE PIKE COMMITTEE ISSUED ON NOVEMBER 6, 1975 WHICH WERE THE BASIS FOR RESOLUTIONS OF "CONTUMACIOUS CONDUCT," WERE NOT ADDRESSED TO HENRY A. KISSINGER BY NAME, BUT WERE ADDRESSED TO THE "ASSISTANT TO THE PRESIDENT FOR NATIONAL SECURITY AFFAIRS, OR ANY SUBORDINATE OFFICER, OFFICIAL OR EMPLOYEE WITH CUSTODY OR CONTROL..." OF SPECIFIED DOCUMENTS. THE DOCUMENTS REQUESTED WERE RECORDS OF THE 40 COMMITTEE AND DOCUMENTS RELATED TO COMPLIANCE WITH THE SALT AGREEMENTS.
- 9. THE WHITE HOUSE DECIDED TO ATTEMPT A GOOD FAITH COMPLIANCE WITH THE TWO SUBPOENAS ADDRESSED TO THE ASSISTANT TO THE PRESIDENT, AND THE STAFF OF THE NSC WAS INSTRUCTED BY THE PRESIDENT THROUGH HIS COUNSEL (PHILIP BUCHEN) TO MAKE EVERY POSSIBLE EFFORT TO WORK WITH THE COMMITTEE TO ASSURE THAT THOSE SUBPOENAS WERE COMPLIED WITH IN A MANNER THAT MET THE COMMITTEE'S NEEDS, WHILE AT THE SAME TIME PROTECTING THE INTEGRITY OF THE DECISION-MAKING PROCESS AND THE NATIONAL SECURITY. NUMEROUS DOCUMENTS WERE DELIVERED, SOME WITH DELETIONS-ACCORDING TO PRESS REPORTS THE DOCUMENTS DELIVERED WERE UNSATISFACTORY TO THE COMMITTEE. IN THIS CONNECTION. THE COMMITTEE RESOLUTIONS WERE VOTED ON BEFORE THE DELIVERY OF DOCUMENTS HAD BEEN COMPLETED AND WHEN THE COMMITTEE STAFF KNEW FURTHER DOCUMENTS WERE YET TO COME. NEVERTHE -LESS, AND WITHOUT ANY NOTICE TO SECRETARY KISSINGER OR OPPORTUNITY TO BE HEARD. THE COMMITTEE VOTED THE RESOLU-TIONS RECOMMENDING CONTEMPT CITATIONS OF THE SECRETARY.
- 10. AFTER NOVEMBER 3 (FOLLOWING THE PRESIDENT'S ANNOUNCE-MENT AT HIS PRESS CONFERENCE ON THAT DATE), HENRY KISSINGER WAS NO LONGER ASSISTANT TO THE PRESIDENT FOR NATIONAL SECURITY AFFAIRS.
- 11. THE TWO NSC SUBPOENAS WERE NOT ADDRESSED TO OR SERVED UPON SECRETARY KISSINGER. THEY WERE IN FACT SERVED ON ANOTHER PERSON AND THE RETURN SHOWS THAT SUCH SERVICE WAS ACCEPTED ON BEHALF OF JEANNE DAVIS WHO IN FACT IS CUSTODIAN OF NSC DOCUMENTS. SECRETARY KISSINGER HAD NEITHER CUSTODY NOR CONTROL OF THE DOCUMENTS CALLED FOR BY THO SUBPOENAS. THE COMMITTEE DID NOT DEAL WITH

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SECRETARY KISSINGER OR HIS SUBORDINATES IN CONNECTION WITH THE WHITE HOUSE EFFORTS TO COMPLY. HE HAS NOT BEEN INVOLVED IN ANY WAY IN ANY DECISIONS MADE WITH RESPECT TO COMPLIANCE WITH THOSE SUBPOENAS.

- 12. ON NOVEMBER 19 THE PRESIDENT SENT THE FOLLOWING LETTER TO CHAIRMAN PIKE:
- 13. DEAR MR. CHAIRMAN:
- I WANT YOU TO KNOW OF MY DEEP CONCERN BECAUSE THE SELECT COMMITTEE FOUND IT NECESSARY ON NOVEMBER 14 TO VOTE IN FAVOR OF THREE RESOLUTIONS WHICH COULD LEAD TO A FIND-ING BY THE HOUSE OF REPRESENTATIVES THAT SECRETARY OF STATE HENRY KISSINGER IS IN CONTEMPT FOR FAILURE TO COMPLY WITH THREE COMMITTEE SUBPOENAS. THIS ISSUE INVOLVES GRAVE MATTERS AFFECTING OUR CONDUCT OF FOREIGN POLICY AND RAISES QUESTIONS WHICH GO TO THE ABILITY OF OUR REPUBLIC TO GOVERN ITSELF EFFECTIVELY. I KNOW THAT YOU, MR. CHAIRMAN, SHARE MY DEEP RESPECT FOR THE RIGHTS AND POWERS OF THE HOUSE OF REPRESENTATIVES -- WHERE OUR CUMULATIVE SERVICE SPANS NEARLY FOUR DECADES -- AND FOR THE OBLIGATIONS AND RESPON-THE TWO BRANCHES OF GOVERN-SIBILITIES OF THE PRESIDENT. MENT HAVE AN EXTREMELY SERIOUS RESPONSIBILITY TO CONSIDER THE ISSUES RAISED IN THE ONGOING FOREIGN INTELLIGENCE INVESTIGATIONS DISPASSIONATELY AND WITH MUTUAL RESPECT.
- AGO THAT THERE CAN BE NO DOUBT AS TO THE POWER OF CONGRESS AND ITS COMMITTEES TO INVESTIGATE FULLY MATTERS RELATING TO CONTEMPLATED LEGISLATION. WITHOUT THIS POWER, WHICH INCLUDES THE AUTHORITY TO COMPEL TESTIMONY AND THE PRODUCTION OF DOCUMENTS, THE CONGRESS COULD NOT EXERCISE ITS RESPONSIBILITIES UNDER ARTICLE I OF OUR CONSTITUTION. HOWEVER, THIS POWER, AS BROAD AS IT IS, IS SUBJECT TO RECOGNIZED LIMITATIONS. NOT ONLY IS IT LIMITED BY POWERS GIVEN TO THE OTHER TWO BRANCHES, BUT IT ALSO MUST RESPECT REQUIREMENTS OF PROCEDURAL DUE PROCESS AS THEY AFFECT INDIVIDUALS.
- 16. THE ACTION OF YOUR COMMITTEE CONCERNING THE NOVEMBER 14TH RESOLUTIONS RAISES, IN MY MIND, THREE PRINCIPAL

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SSUES: THE EXTENT TO WHICH THE COMMITTEE NEEDS ACCESS TO ADD IT IONAL EXECUTIVE BRANCH DOCUMENTS TO CARRY OUT ITS LEGISLATIVE FUNCTIONS; THE IMPORTANCE OF MAINTAINING THE SEPARATION OF POWERS BETWEEN THE BRANCHES AND THE ABILITY OF THE EXECUTIVE TO FUNCTION; AND THE INDIVIDUAL RIGHTS OF OFFICIALS INVOLVED IN THIS MATTER. I AM NOT INTERESTED IN RECRIMINATIONS AND COLLATERAL ISSUES WHICH ONLY SERVE TO CLOUD THE SIGNIFICANT QUESTIONS BEFORE US.

- 17. FROM THE BEGINNING OF THE INVESTIGATIONS OF THE INTELLIGENCE AGENCIES, I HAVE TAKEN ACTION TO STOP ANY POSSIBLE ABUSES AND TO MAKE CERTAIN THAT THEY DO NOT RECUR AS LONG AS I AM PRESIDENT. I HAVE ALSO ENDEAVORED TO MAKE AVAILABLE RELEVANT INFORMATION IN A RESPONSIBLE MANNER TO THE APPROPRIATE COMMITTEES OF CONGRESS.
- MAINTAIN THE INTEGRITY OF OUR INTELLIGENCE COMMUNITY AND THE ABILITY OF THIS NATION TO DEVELOP AND USE FOREIGN INTELLIGENCE. THIS IS ONE REASON WHY I HAVE INSISTED THAT MUCH OF THE INFORMATION I HAVE MADE AVAILABLE TO CONGRESS BE KEPT SECRET, SO THAT CURRENT FOREIGN INTELLIGENCE OPERATIONS, WHICH ARE CRITICAL FOR THE NATIONAL SECURITY, CAN CONTINUE EFFECTIVELY. IN ACCORDANCE WITH THESE PRINCIPLES, YOUR COMMITTEE AND THE SENATE SELECT COMMITTEE HAVE RECEIVED UNPRECEDENTED ACCESS TO EXECUTIVE BRANCH DOCUMENTS AND INFORMATION.
- 19. YOUR COMMITTEE'S NOVEMBER 6TH VOTES ON SLVEN SUBPOENAS FOR ADDITIONAL EXECUTIVE BRANCH DOCUMEN'S CAME IN
 THE CONTEXT OF SEVERAL MONTHS OF WORKING TOGETHER ON THIS
 VERY DIFFICULT SUBJECT AND A RECORD OF COOPERATION ON BOTH
 SIDES. THEY WERE SERVED ON NOVEMBER 7. THE DOCUMENTS
 WERE DUE ON THE MORNING OF NOVEMBER 11, AND THE APPROPRIATE ADMINISTRATION OFFICIALS IMMEDIATELY WENT TO WORK
 COLLECTING THE INFORMATION. FOUR OF THE SUBPLENAS WERE
 COMPLIED WITH FULLY. HOWEVER, PROBLEMS AROSE AS TO THE
 REMAINING THREE ISSUED TO
- -- "HENRY A. KISSINGER, SECRETARY OF STATE, OR ANY SUBORDI-NATE OFFICER, OFFICIAL OR EMPLOYEE WITH CUSTODY OR CONTROL OF ... ALL DOCUMENTS RELATING TO STATE DEPARTMENT RECOM-

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MENDING COVERT ACTION MADE TO THE NATIONAL SECURITY COUNCIL AND ITS PREDECESSOR COMMITTEES FROM JANUARY 30, 1961 TO PRESENT."

-- "THE ASSISTANT TO THE PRESIDENT FOR NATIONAL SECURITY AFFAIRS, OR ANY SUBORDINATE OFFICER, OFFICIAL OR EMPLOYEE WITH CUSTODY OR CONTROL OF ... ALL 40 COMMITTEE AND PREDECESSOR COMMITTEE RECORDS OF DECISIONS TAKEN SINCE JANUARY 20, 1965 REFLECTING APPROVALS OF COVERT ACTION PROJECTS. (SEPARATE SUBPOENA) ... ALL DOCUMENTS FURNISHED BY THE ARMS CONTROL AND DISARMAMENT AGENCY'S STANDING CONSULTATIVE COMMISSION, AND THE CENTRAL INTELLIGENCE

AGENCY, THE NATIONAL SECURITY AGENCY, THE DEPARTMENT OF DEFENSE, AND THE INTELLIGENCE COMMUNITY STAFF, SINCE MAY, 1972 RELATING TO ADHERENCE TO THE PROVISIONS OF THE STRATEGIC ARMS LIMITATION TREATY OF 1972 AND THE VLADIVOSTOK AGREEMENT OF 1972."

20. THESE THREE SUBPOENAS ARE THE BASIS OF THE COMMITTEE RESOLUTIONS OF NOVEMBER 14.

THE SUBPOENA DIRECTED TO THE SECRETARY OF STATE REQUESTS DOCUMENTS CONTAINING THE RECOMMENDATION OF STATE DEPARTMENT OFFICIALS TO FORMER PRESIDENTS CONCERNING HIGHLY SENSITIVE MATTERS INVOLVING FOREIGN INTELLIGENCE ACTIVITIES OF THE UNITED STATES. THE APPROPRIATE STATE DEPARTMENT OFFICIALS IDENTIFIED AND REFERRED TO THE WHITE HOUSE DOCUMENTS WHICH APPARENTLY FALL WITHIN THE NONE OF THESE DOCUMENTS ARE FROM MY ADMINISTRA-SUBPOENA. TION. THESE WERE CAREFULLY REVIEWED AND, AFTER I RECEIVED THE OPINION OF THE ATTORNEY GENERAL THAT THESE DOCUMENTS ARE OF THE TYPE FOR WHICH EXECUTIVE PRIVILEGE MAY APPRO-PRIATELY BE ASSERTED, I DIRECTED SECRETARY KISSINGER NOT TO COMPLY WITH THE SUBPOENA ON THE GROUNDS OF EXECUTIVE I MADE A FINDING THAT, IN ADDITION TO DIS-PRIVILEGE. CLOSING HIGHLY SENSITIVE MILITARY AND FOREIGN AFFAIRS ASSESSMENTS AND EVALUATIONS, THE DOCUMENTS REVEALED TO AN UNACCEPTABLE DEGREE THE CONSULTATION PROCESS INVOLVING ADVICE AND RECOMMENDATIONS TO PRESIDENTS KENNEDY, JOHNSON, AND NIXON. MADE TO THEM DIRECTLY OR TO COMMITTEES COMPOSED OF THEIR CLOSEST AIDES AND COUNSELORS. THUS, IN DECLINING

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TO COMPLY WITH THE SUBPOENA, SECRETARY OF STATE KISSINGER WAS ACTING ON MY INSTRUCTIONS AS PRESIDENT OF THE UNITED STATES.

22. WITH RESPECT TO THE TWO SUBPOENAS DIRECTED TO "...THE ASSISTANT TO THE PRESIDENT FOR NATIONAL SECURITY AFFAIRS, OR ANY SUBORDINATE OFFICER, OFFICIAL OR EMPLOYEE WITH CUSTODY OF CONTROL...", THE REALLY IMPORTANT POINT HERE IS THAT THE NSC STAFF HAS MADE A MAJOR EFFORT TO DELIVER THE DOCUMENTS REQUESTED. AS YOU KNOW, ADDITIONAL DOCUMENTS WERE MADE AVAILABLE TO THE COMMITTEE AFTER THE DEADLINE OF

THE SUBPOENAS AND INDEED AFTER THE COMMITTEE VOTED ON THE NOVEMBER 14TH RESOLUTIONS. THERE HAS BEEN AND CONTINUES TO BE AN EFFORT ON THE PART OF THE NSC STAFF TO PROVIDE THE COMMITTEE WITH THE INFORMATION AND DOCUMENTATION IT NEEDS. IN FACT, A VERY COMPREHENSIVE VOLUME OF INFORMATION HAS BEEN MADE AVAILABLE WHICH PROVIDES THE COMMITTEE A SUBSTANTIAL BASIS FOR ITS INVESTIGATION.

- 23. THIS EFFORT WAS UNDERTAKEN, NOTWITHSTANDING THE FACT THAT THE SUBPOENAS THEMSELVES WERE SERVED ON NOVEMBER 7, MADE RETURNABLE ONLY FOUR DAYS LATER, AND CALLED FOR A BROAD CLASS OF DOCUMENTS, GOING BACK IN ONE SUBPOENA TO 1965, AND IN THE OTHER TO 1972. SUBSTANTIAL EFFORTS WERE REQUIRED TO SEARCH FILES, IDENTIFY ITEMS COVERED, AND TO REVIEW THEM FOR FOREIGN POLICY AND NATIONAL SECURITY REASONS IN ACCORDANCE WITH PROCEDURES WHICH HAVE BEEN PREVIOUSLY USED WITH INFORMATION REQUESTED BY THE SELECT COMMITTEE.
- 24. IN ADDITION TO OUR EFFORTS TO SUBSTANTIALLY COMPLY WITH THESE TWO SUBPOENAS, I HAVE BEEN ADVISED THAT THERE ARE SERIOUS AND SUBSTANTIAL LEGAL AND FACTUAL QUESTIONS AS TO THE BASIS ON WHICH THE COMMITTEE SEEKS TO FIND SECRETARY KISSINGER TO BE IN CONTEMPT. THE SUBPOENAS WERE DIRECTED TO "...THE ASSISTANT TO THE PRESIDENT FOR NATIONAL SECURITY AFFAIRS, OR ANY SUBORDINATE OFFICER..." AND WERE IN FACT SERVED ON THE STAFF SECRETARY OF THE NSC. SECRETARY KISSINGER HAD NO RESPONSIBILITY FOR RESPONDING TO THESE SUBPOENAS NOR FOR SUPERVISING THE RESPONSE TO THEM. AFTER NOVEMBER 3, HE WAS NO LONGER MY ASSISTANT

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FOR NATIONAL SECURITY AFFAIRS, AND HE WAS NEITHER NAMED IN THE SUBPOENAS NOR WERE THEY SERVED UPON HIM. THUS THERE IS NO BASIS FOR THE RESOLUTIONS ADDRESSED TO SECRETARY KISSINGER ON THESE SUBPOENAS.

IN SUMMARY, I BELIEVE THAT IF THE COMMITTEE WERE TO RECONSIDER THE THREE RESOLUTIONS OF NOVEMBER 14, IT WOULD CONCLUDE THAT MY CLAIM OF EXECUTIVE PRIVILEGE IS A PROPER EXERCISE OF MY CONSTITUTIONAL RIGHT AND RESPONSIBILITY. AS TO THE TWO SUBPOENAS DIRECTED TO THE ASSISTANT FOR NATIONAL SECURITY AFFAIRS, THEY DO NOT INVOLVE SECRETARY KISSINGER, AND THERE HAS BEEN A SUBSTANTIAL EFFORT BY THE NSC STAFF TO PROVIDE THESE DOCUMENTS. FURTHERMORE, THEY WILL CONTINUE TO WORK WITH YOU AND YOUR COMMITTEE TO RESOLVE ANY REMAINING PROBLEMS.

IT IS MY HOPE THAT THE SELECT COMMITTEE WILL PERMIT EXECU-TIVE BRANCH OFFICIALS TO APPEAR AT TOMORROW'S HEARING TO DISCUSS THE POINTS I HAVE RAISED IN THIS LETTER.

27. IT IS MY DESIRE THAT WE CONTINUE FORWARD, WORKING TOGETHER ON THE FOREIGN INTELLIGENCE INVESTIGATION. I BELIEVE THAT THE NATIONAL INTEREST IS BEST SERVED THROUGH OUR COOPERATION AND ADOPTION OF A SPIRIT OF MUTUAL TRUST AND RESPECT. SINCERELY, GERALD R. FORD. KISSINGER BT #5578